

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TIME WARNER TELECOM OF HAWAII,)
L.P., dba OCEANIC COMMUNICATIONS)
For Approval of Reorganization or)
Waiver.)
_____)

DOCKET NO. 05-0232

DECISION AND ORDER NO. 22203

Filed December 29, 2005
At 10 o'clock A.M.

for Brooke K. Kane
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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BROOKE K. KANE
Administrative Director
Public Utilities Commission
State of Hawaii

Brooke K. Kane

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DECISION AND ORDER

By this Decision and Order, the commission approves the proposed reorganization of TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS' ("Oceanic") parent companies, as described in its application filed on September 14, 2005.

I.

Background

Oceanic is a Delaware limited partnership authorized to transact business in the State of Hawaii ("State") and a public utility as defined by Hawaii Revised Statutes ("HRS") § 269-1. It is authorized to provide interstate and intrastate telecommunications services such as dedicated assess (private line) and local exchange services.¹

¹Oceanic received authority to provide direct and resold telecommunication services through a series of commission proceedings. See Docket No. 94-0093, Decision and Order No. 14145, filed on August 17, 1995 (granting Oceanic a certificate of public convenience and necessity ("CPCN") to provide digital and analog intrastate dedicated transport telecommunications services within the City and County of Honolulu); Docket No. 95-0316, Decision and Order No. 14395,

Time Warner Telecom, Inc. ("TWTC"), a publicly held Delaware corporation, is Oceanic's 99% limited partner. Time Warner Telecom Holdings Inc. ("TWTTH"), wholly owned by TWTC, owns a 1% general partnership interest in Time Warner Telecom General Partnership ("TWTGP"), which maintains a 1% general partnership interest in Oceanic. TWTTH also owns Time Warner Telecom Holdings II LLC ("TWTTH LLC"), which holds a 99% limited partnership interest in TWTGP. TWTC, through its various certificated local operating subsidiaries, is a national competitive local exchange carrier ("CLEC") offering a broad range of telecommunications services.

A.

Application

On September 14, 2005, Oceanic filed an application for approval of a proposed reorganization of its parent companies pursuant to HRS §§ 269-7 and 269-16.9(e) ("Application").² TWTC is proposing a corporate reorganization under which its 99% limited partnership interest in Oceanic (and nine (9) other existing partnership entities operating in other states) will be

filed on November 27, 1995 (granting Oceanic's request to amend its CPCN to provide telecommunications services throughout the State); and Docket No. 95-0329, Decision and Order No. 14842, filed on August 5, 1996 (dismissing as moot Oceanic's request to amend its CPCN to expand its authority to provide direct and resold local exchange services in light of Hawaii Administrative Rules ("HAR") Chapter 6-80, which became effective on June 3, 1996). Additionally, under HAR Chapter 6-80, Oceanic's CPCN is now referred to as a certificate of authority.

²Oceanic served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

transferred to TWTH LLC, a wholly owned subsidiary of TWTH ("Proposed Reorganization"). Additionally, under the Proposed Reorganization, TWTGP will transfer its 1% general partnership interest in Oceanic (and nine (9) other existing partnership entities operating in other states) to TWTH.³

Oceanic states that the Proposed Reorganization is intended to eliminate certain reporting requirements and inefficiencies related to its current corporate structure. TWTC currently operates under twenty-five (25) different legal entities--nine (9) of which (including Oceanic) operate as limited partnerships with 99% ownership by TWTC and 1% indirect ownership by TWTH. The sixteen (16) remaining entities operate as limited liability corporations or disregarded partnerships wholly owned and reported by TWTH. However, for the nine (9) limited partnerships (including Oceanic), separate federal and state tax returns are prepared, which requires TWTC to annually employ two (2) full-time staff employees for a period of two (2) months. Additionally, due to the existing corporate structure, quarterly financial disclosure statements filed with the Securities and Exchange Commission ("SEC") under FAS109 require manual spreadsheet analysis and updates since software based spreadsheets that require less time to maintain, update, and certify are unable to support TWTC's current corporate structure. Moreover, since internal operating reports and analysis are

³Pursuant to HAR Subchapter 10, Oceanic incorporates by reference its most recent year-end filed financial statements to satisfy the requirements of HAR § 6-61-75. However, to the extent that any other financial or other documentation is required, Oceanic requests an exemption or waiver from these requirements under HRS § 269-16.9.

reviewed and compared on a consolidated basis, significant time is expended to reconcile and convert the existing corporate structure and tax reporting into comparable operating reports.

Oceanic contends that the Proposed Reorganization is reasonable and in the public interest and, thus, warrants commission approval. In support of this claim, Oceanic represents that: (1) it will indirectly benefit from the Proposed Reorganization through various reporting efficiencies realized through the Proposed Reorganization; and (2) the Proposed Reorganization will have no material impact on its operations, its customers, the public interest, or its existing tariff rates and services.

In the alternative, Oceanic requests that the commission waive the approval requirements for the Proposed Reorganization under HRS § 269-16.9(e). Oceanic compares the Proposed Reorganization to the reorganization proposed in In re ITC^DeltaCom, Inc., Docket No. 04-0280, Decision and Order No. 21471, filed on November 24, 2004 ("Docket No. 04-0280") wherein the commission waived the approval requirements under HRS § 269-16.9(e). Similar to the commission's findings in Docket No. 04-0280, Oceanic contends that: (1) it provides competitive services in the State; (2) it is not a dominant carrier; (3) the transaction is reasonable and in the public interest; and (4) competition will serve the same purpose as public interest regulation. Moreover, Oceanic states that waiver of the approval requirements in this instance will reduce regulatory delay and

costs to TWTC and its subsidiaries, and assist in the timely finalization of the Proposed Reorganization.

To realize the projected benefits of the Proposed Reorganization, Oceanic states that TWTC must complete the Proposed Reorganization by December 31, 2005.

B.

Consumer Advocate's Position

On October 5, 2005, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to approval of the Proposed Reorganization nor the requested waiver ("Consumer Advocate's Statement of Position"). The Consumer Advocate's recommendation is based, in part, on its recognition that the parties to the Proposed Reorganization are related and internal to the corporation and will remain the same after the Proposed Reorganization, aside from the elimination of TWTGP. The Consumer Advocate also contends that it could not deduce any negative effect on the competitive telecommunications market in Hawaii from the Application, and that its recommendation is based on Oceanic's contention that the Proposed Reorganization will be transparent to Oceanic's Hawaii customers.

Specifically, in support of Oceanic's waiver request, the Consumer Advocate contends that a waiver of the applicable approval requirements of the Proposed Reorganization is consistent with past commission decisions regarding proposed

corporate reorganizations.⁴ Similar to Oceanic, the Consumer Advocate contends that the commission waived applicable approval requirements under HRS § 269-16.9(e) and HAR § 6-61-135 upon a determination that: (1) the authorized carriers in Docket Nos. 03-0386, 04-0280, and 04-0177 were non-dominant carriers providing competitive services; (2) the reorganizations were consistent with the public interest; and (3) competition served the same purposes as public interest regulation.

II.

Discussion

A.

Commission Review

HRS § 269-19 states:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

⁴See In re Primus Telecommunications, Inc. and Least Cost Routing, Inc., Docket No. 03-0386, Decision and Order No. 20773, filed on January 20, 2004 ("Docket No. 03-0386"); Docket No. 04-0280; and In re XO Long Distance Services, Inc. and XO Communications Services, Inc., Docket No. 04-0177, Decision and Order No. 21360, filed on September 22, 2004 ("Docket No. 04-0177").

HRS § 269-19 (emphasis added). The purpose of HRS § 269-19 is to safeguard the public interest.⁵

Moreover, under HRS § 269-7(a), the commission is empowered to examine the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Accordingly, the commission, under HRS § 269-7(a), has the authority to examine any and all transactions of the public utility that affect or may affect the public that it serves.

Upon review of the record in this docket, the commission finds the Proposed Reorganization to be reasonable and in the public interest. The commission's decision regarding this matter is based on, among other matters, Oceanic's representations that the Proposed Reorganization: (1) will have no material impact on Oceanic's operations in the State; (2) will not affect Oceanic's current tariff rates or existing services; and (3) will have no adverse impact on Oceanic's customers or the public interest.

It appears that the Proposed Reorganization should benefit Oceanic and its various affiliates through increased operational efficiencies. The commission notes Oceanic's assertions that the Proposed Reorganization will allow TWTC to: (1) save income tax personnel time by approximately 20-25%;

⁵See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).

(2) improve quarterly SEC reporting efficiencies; (3) pursue software upgrades related to its SEC FAS109 reporting to improve internal control maintenance, updates, and operations to satisfy Sarbanes-Oxely requirements; (4) generate internal operational reports more efficiently; and (5) create consolidated accounting reporting efficiencies. Increased efficiency realized through the Proposed Reorganization should result in a stronger entity that can better respond to the competitive forces that currently exist in the State's telecommunications market. Accordingly, the Proposed Reorganization appears to also further the commission's objective of fostering competition in the State's telecommunications market. Additionally, the commission agrees with the Consumer Advocate's contention that since the commission has authorized a number of telecommunications providers to operate in the State, any negative consequences from the Proposed Reorganization should not significantly impact Hawaii customers since these customers have the option of selecting another service provider.

Based on the foregoing, the commission concludes that the Proposed Reorganization should be approved under HRS §§ 269-19 and 269-7(a), as applicable.⁶

⁶Given that the commission is approving the Proposed Reorganization under HRS §§ 269-19 and 269-7(a), Oceanic's alternative request for a waiver of the approval requirements, pursuant to HRS § 269-16.9(e), is moot.

B.

Waiver of Filing Requirements

Under HRS § 269-16.9(e), "[t]he commission may waive other regulatory requirements under this chapter applicable to telecommunications providers when it determines that competition will serve the same purpose as public interest regulation." Similarly, HAR § 6-80-135 allows the commission to grant an exemption from or waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions related to HRS § 269-34), upon a determination that an exemption or waiver is in the public interest.

The commission finds that: (1) Oceanic provides competitive services in the State; (2) Oceanic is not a dominant carrier in the State; (3) the Proposed Reorganization is in the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation. Accordingly, to the extent that the Application is inconsistent with any of the filing requirements of HAR Chapter 6-61, the commission finds, in this case, that a waiver of these requirements is appropriate.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Reorganization, described in Oceanic's Application filed on September 14, 2005, is approved, pursuant to HRS §§ 269-19 and 269-7(a).

2. To the extent that the Application is inconsistent with any of the filing requirements of HAR Chapter 6-61, the applicability of those requirements are waived, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

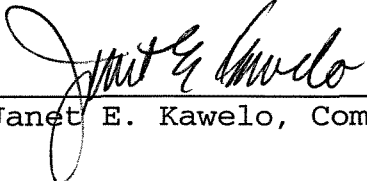
3. This docket is closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii December 29, 2005.

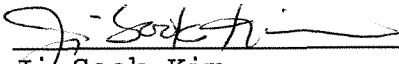
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel
05-0232.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22203 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: December 29, 2005